

Regular inspections of the Martinka Mine are performed by MSHA inspectors out of the Subdistrict Office in Fairmont, West Virginia, which operates under the direction of the Morgantown District Office. After several of the citations involved here were issued, it became apparent that a difference in policy existed between the District and the Subdistrict Offices regarding the citation of permanent pumps for a violation of § 1105. At least one inspector from the Fairmont Office, Charles Thomas, who was the regular inspector at Martinka, operated under a "visibility standard" in citing permanent pumps for § 1105 violations. Under this approach, pumps located in frequently traveled areas or in track haulage entries were not cited for violations of § 1105. Permanent pumps in more isolated areas were cited.

Inspector Thomas' approach was at odds with District and National Office policy, which subjects all pumps to § 1105 requirements if they meet the definition of a "permanent" electrical installation as contained in the following part of MSHA's Underground Inspection Manual p. II-471 (March 9, 1978):

POLICY

A permanent electrical installation is electric equipment that is expected to remain in place for a relatively long or indefinite period of time.

Consequently, the following electric equipment should be considered permanently installed:

All rectifiers, transformers, high-voltage switchgear and battery chargers which are not located on and advanced with the working section; rotary converters; motor-generator sets; belt drivers; compressors; pumps (except those excluded below) and other similar units of electric equipment.

The following electric equipment should not be considered permanently installed: